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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,401	12/12/2000	Eckhard Alt	IFD/046	4641

7590

10/08/2002

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EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 10/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/735,401

Applicant(s)  
Alt

Examiner  
Michael Thaler

Art Unit  
3731



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Sep 5, 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 61, 64, 65, and 68 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 61, 64, 65, and 68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

Art Unit: 3731

Claims 65 and 68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 65, line 3 is inaccurate since the wall of the stent is not solid, but rather has openings formed therein.

Claims 61, 64, 65 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontaine (5,370,683) in view of Alfidi et al. (3,868,956). Note figures 10-12 of Fontaine. The Fontaine tube constitutes a single member from which the entire stent is fabricated, wherein all interconnections of struts are uninterrupted and free of bonds or welds (col. 6, lines 23-26). Fontaine fails to show the cross-section of the struts as oval. Making the cross-section of the Fontaine struts oval in rather than circular in order to maximize the area of contact between the stent and the wall of the vessel would have been obvious in view of the Alfidi et al. teaching that the cross-section of stent struts may be oval (figure 13D) rather than circular (figure 13 C) for this reason.

Claims 61, 64, 65 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein (5,593,442) in view of Alfidi et al. (3,868,956). The Klein stent is formed from a single open ended tube (col. 6, lines 10-17). Klein fails to show the cross-section of the struts as oval. Making the cross-section of the Fontaine struts oval in order to maximize the area of contact

Art Unit: 3731

between the stent and the wall of the vessel would have been obvious in view of the Alfidi et al. teaching that the cross-section of stent struts should be oval (figure 13D) for this reason.

Claims 61, 64, 65 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Alfidi et al. (3,868,956). Alfidi et al. in figures 11, 12 and 13D, show a scaffold formed from a single open ended tube (the appliance 90 is considered to be a tube since it is generally tubular) having a multiplicity of through-holes (the open spaces between the windings of the coil and the straight segment of the wire which extends along the longitudinal axis of the tube).

Applicant's arguments filed sep. 5, 2002 have been fully considered but they are not persuasive. The arguments regarding the solid form of the appliance on pages 3 and 4 of the response are not understood. The stent of the invention is not formed of a solid tube since it has openings in the wall thereof. In fact, claim 61 does not require the stent to have a solid wall, but rather merely indicates that the method of manufacturing the stent is by forming it from a tube having a solid wall. Since the wall of the invention is not solid, it is not necessary for the stents of the prior art to have a solid wall. As to the rejection based upon Alfidi et al. alone, the open spaces between the windings of the coil and the straight segment of the wire which extends along

Serial Number: 09/735,401

4

Art Unit: 3731

the longitudinal axis of the tube (figures 11 and 12) form a multiplicity of through-holes rather than a single through-hole.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

mht  
October 7, 2002  
FAX (703) 305-3590



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731